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INFORMATION CIRCULAR

To: Members of the staff

From: The Under-Secretary-General for Administration and Management

Subject: TERMS OF REFERENCE FOR INVESTIGATIONS BY THE OFFICE OF INTERNAL OVERSIGHT SERVICES: "MISMANAGEMENT, MISCONDUCT, WASTE OF RESOURCES AND ABUSE OF AUTHORITY"*

I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) exercises operational independence under the authority of the Secretary-General in the conduct of its duties and is authorized to initiate, carry out and report on any action that it considers necessary to fulfil its responsibilities. 1/ The purpose of OIOS is to assist the Secretary-General in fulfilling his internal oversight responsibilities, which extend to the staff and resources of the Organization as well as to separately administered organs. 2/

2. Among its several duties, OIOS is mandated to investigate reports of violations of United Nations regulations, rules and other pertinent administrative issuances and to transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken. 3/ The Investigations Section of OIOS has been given responsibility for carrying out such investigations.

3. The Investigations Section is authorized to assess the potential within programme areas for fraud and other violations through the analysis of systems of control in high-risk operations, as well as offices away from headquarters. 4/ Additionally, the Section may receive reports from staff and other persons engaged in activities under the authority of the Organization

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suggesting improvements in programme activity and reporting perceived cases of possible violations of regulations or rules as well as possible cases of (a) mismanagement, (b) misconduct, (c) waste of resources or (d) abuse of authority. 5/

4. When the Investigations Section has completed an investigation, the Section/OIOS must report the results of the investigation to the Secretary-General or to his authorized designee, unless the Section/OIOS determines that, in the circumstances, such action is unnecessary. Upon receiving a report of an investigation, the Secretary-General must then determine whether the nature of the reported conduct of staff members constitutes "misconduct", within the meaning of chapter X of the Staff Regulations and Staff Rules, or "unsatisfactory performance", within the meaning of chapter IX of the Staff Regulations and Staff Rules. Following that determination, the Secretary-General must next decide whether to institute disciplinary proceedings in the case of misconduct, to institute appropriate proceedings in relation to unsatisfactory performance or to take other suitable measures. No matter what determination is made by the Secretary-General, staff are entitled to the full protection of the procedures prescribed in the Staff Regulations and Staff Rules, as interpreted by the United Nations Administrative Tribunal. 6/ Moreover, the report and recommendations of the Investigations Section/OIOS notwithstanding, the Secretary-General has discretion to decide that the matters described in the report of the Section/OIOS do not warrant further action and may so inform OIOS.

II. DEFINITIONS OF CATEGORIES OF CONDUCT

5. In order to better guide the Investigations Section/OIOS in conducting investigations and to more clearly apprise staff members, OIOS has elaborated four categories of activities for which the Section/OIOS has been mandated to receive reports from staff and other persons engaged in activities under the authority of the Organization. These elaborations derive from the Charter of the United Nations, the Staff Regulations and Staff Rules, other pertinent administrative issuances and decisions of the United Nations Administrative Tribunal. The elaborations will be applied by the Section/OIOS to investigations of staff and, *mutatis mutandis*, 7/ to United Nations officials who are not staff members or others engaged in activities under the authority of the Organization. The elaborations are grouped under the two principal classifications derived from the Charter and the Staff Regulations. However, these two principal classifications are not mutually exclusive; for example, on the one hand activities that may be seen to constitute "misconduct" may, and often do, also constitute "unsatisfactory performance" while actions that may seem to constitute unsatisfactory conduct might, in egregious cases, constitute misconduct.

A. Misconduct

6. Staff rule 110.1 defines misconduct as follows:

> "Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or

other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, 8/ leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct."

Activities that would constitute a failure to maintain the highest standards of integrity include, for example, the following:

(a) Any wilful and unwarranted disregard of the Organization's legislative mandates or of its Staff Regulations and Staff Rules and other administrative issuances and any failure to exercise proper care that is either intended to result in personal benefit or misappropriation of monetary or other resources of the Organization;

(b) Any act, for example, any type of false certification in respect to claims for benefits and allowances, or failure to act, which demonstrates a failure to maintain the highest standards of integrity required by the Charter as well as any statement, written or oral, or silence that is intended to mislead and that results in the misappropriation of monetary or other resources of the Organization.

B. Unsatisfactory performance

7. The Charter requires staff to perform in accordance with the "highest standards of efficiency [and] competence". Lapses from that standard may be characterized as "unsatisfactory performance". Activities that would constitute a failure to meet the highest standards of efficiency and competence and, therefore, that could be characterized as "unsatisfactory performance" include the following:

(a) Mismanagement includes, for example:

(i) Any unreasonable failure of a staff member to perform efficiently, competently and with the best interests of the Organization in mind, all assigned tasks, duties and management responsibilities in connection with United Nations programmes and its operations, contracts and resources;

(ii) Any unreasonable failure by a staff member to ensure that consultants and contractors are retained on such terms and for such tasks as are in the best interest of the Organization and to adequately supervise those consultants or contractors so as to ensure that they are paid only if they perform as agreed;

(b) Waste of resources includes, for example:

(i) Any unreasonable failure to ensure that the monetary or other resources of the Organization are used solely, efficiently and effectively for the purposes of the Organization or for its benefit;

(ii) Any unreasonable act or failure to act, which, as a direct result of a failure to exercise due care, causes loss to the Organization;

(c) Abuse of authority includes, for example, any discharge of management responsibilities and any act or failure to act, which is motivated other than by the interests or purposes of the Organization.

Notes

1/ General Assembly resolution 48/218 B of 29 July 1994.

2/ Secretary-General's bulletin ST/SGB/273 of 7 September 1994.

3/ General Assembly resolution 48/218 B, para. 5 (c) (iv).

4/ ST/SGB/273, para. 17.

5/ ST/SGB/273, para. 18.

6/ Pursuant to paragraph 7 of its resolution 48/218 B, the General Assembly requested the Secretary-General "to ensure that procedures are ... in place that protect individual rights, the anonymity of staff members, due process for all parties concerned and fairness during any investigations". These procedures are detailed in paragraph 18 of the Secretary-General's bulletin ST/SGB/273.

7/ The definitions will be applied generally to officials who are not staff members or others engaged in activities under the authority of the Organization, taking into account, as necessary and appropriate, the different status of such officials and others or their relationship to the Organization. Generally, "others" engaged in activities under the authority of the United Nations are contractors, either corporate or individual, whose relationship to the Organization is governed by a contract that, at least in part, defines the scope of the Organization's remedies for activities within these definitions.

8/ Staff regulation 10.2 provides as follows:

"The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory.

"He may summarily dismiss a member of the staff for serious misconduct."